

file



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

**IN THE MATTER OF CLAIMS AGAINST THE
DEALER BOND OF JIM'S AUTO SALES**

Case No. DOT-98-335

FINAL DECISION

On September 30, 1998, Susan Olson filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of Jim's Auto Sales. The claim along with the documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing.

An informal telephone hearing was conducted on March 1, 1999, Mark J. Kaiser, Administrative Law Judge, presiding. Participating in the telephone hearing were the claimant, Susan Olson, and Jim Hallquist, proprietor of Jim's Auto Sales. The Administrative Law Judge issued a Preliminary Determination on March 26, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

FINDINGS OF FACT

1. Jim Hallquist, d/b/a Jim's Auto Sales, (dealer) is a used motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. The dealer's facilities are located at 205 Jefferson Street, Chippewa Falls, Wisconsin.
2. The dealer has had a surety bond in force from August 9, 1995, to the present date (Bond #SU09592001 from Old Republic Surety, Milwaukee, Wisconsin).
3. On March 16, 1998, Dan and Susan Olson purchased a 1988 Ford F150, Vehicle Identification Number 1FTEF14N6JNA15722, from Jim's Auto Sales. The vehicle was sold with a limited, 30 day warranty covering the engine and transmission. The dealer agreed to pay fifty per cent of the cost of all covered repairs. The repairs were to be performed at a shop chosen by the dealer.
4. On the Wisconsin Buyers Guide prepared by the dealer, the dealer disclosed no problems with the vehicle. The dealer disclosed the mileage of the vehicle as 100,220 miles (Exh. Z14).

5. After purchasing the vehicle, Dan Olson drove it for a few days. He discovered the dual gas tanks did not switch from one tank to the other. The Olsons also began to notice problems with fuses and lights. About a month after they purchased the vehicle, the Olsons also noticed problems with the steering.

6. On around May 4, 1998, the Olsons took the vehicle to a Ford dealership for repairs to the steering and to investigate "sticking in the shifter." The dealership discovered that a tie rod, the rear axle seals, the rear brakes and the transmission on the vehicle were bad. The dealership made the necessary repairs. The total cost of the repairs to the vehicle was \$2,624.80. Of this total \$1,920.01 was for repairs to the transmission. There is no evidence in the record that the dealer was aware of any of these problems prior to the sale of the vehicle to the Olsons or that the problems could have been discovered by the dealer using reasonable care.

7. The vehicle purchased by the Olsons was previously titled in Minnesota to Michel Bergren. On the Minnesota certificate of title transferring the vehicle to Jim's Auto Sales, the odometer disclosure statement is not completed (Exh. Z17). According to the Minnesota title, the odometer of the vehicle read 85,671 miles on March 10, 1997, when it was purchased by Mr. Bergren. On the application for a Wisconsin title submitted by Jim's Auto Sales, the odometer disclosure is also not completed (Exh. Z16).

8. After the hearing, the dealer submitted to the Administrative Law Judge a copy of a handwritten statement purportedly signed by Michel Bergren, the prior owner of the vehicle (Exh. Z24). According to the statement the vehicle's odometer reading was 99,875 miles at the time he sold the vehicle to Jim's Auto Sales (Ex. Z24). Exhibit Z24 is not an odometer disclosure statement issued or approved by the Department of Transportation pursuant to sec. Trans 154.03, Wis. Adm. Code.

9. At the time the vehicle was purchased by the Olsons, it was ten years old. Pursuant to sec. Trans 154.05(3), Wis. Adm. Code, the vehicle was exempt from odometer disclosure requirements. The dealer could have satisfied the requirements of Ch. Trans 154, Wis. Adm. Code, by checking the exempt box on the odometer disclosure statement of the application for title.

10. On September 30, 1998, Susan Olson filed a claim against the surety bond of Jim's Auto Sales with the Department of Transportation. The amount of the claim is \$3,644.80. The claim consists of the \$2,624.80 paid for repairs to the vehicle and \$1,000.00 the Olsons allegedly lost when they subsequently traded the vehicle in for another vehicle. (The Olsons received \$1,000.00 less for the vehicle as a trade-in allowance than they had paid for it.)

11. The bond claim was filed within three years of the ending date of the period the Old Republic Surety bond was in effect and is; therefore, a timely claim.

12. The loss sustained by the Olsons was not caused by an act of the dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is not allowable.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Sec. Trans 140.21(1), Wis. Adm. Code provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Ms. Olson's claim, a finding must be made that Jim's Auto Sales violated one of the sections of sec. 218.01(3)(c), Stats., listed in sec. Trans 140.21(1)(c)1, Wis. Adm. Code, and that the violation caused the loss sustained by the Olsons.

An investigator from the Department of Transportation concluded that inserting the mileage figure of 100,200 on the Wisconsin Buyers Guide constituted a violation of sec. 139.03(2)(a), Wis. Adm. Code. Sec. 139.03(2)(a), Wis. Adm. Code, provides:

Any licensee, making any statement of fact to the public in any advertisement or written statement or representation concerning the motor vehicles it offers for sale, the services it provides or other aspects of its business operation, shall possess detailed evidence of the validity and accuracy thereof, which evidence shall be furnished to the department upon request.

A violation of sec. Trans 139.03(2)(a), Wis. Adm. Code, would in turn be a violation of sec. 218.01(3)(a)4 and/or 14, Stats.

As discussed above, the vehicle was ten years old at the time it was purchased by the Olsons. A vehicle ten or more years old is exempt from the odometer disclosure requirements of chapter Trans 154, Wis. Adm. Code. Therefore Jim's Auto Sales was not required to make any mileage disclosure for this vehicle; however, it is the position of the investigator that when Jim's Auto Sales made a mileage disclosure on the Wisconsin Buyers Guide it was required, pursuant to sec. Trans 139.03(2)(a) Wis. Adm. Code, to have "detailed evidence of the validity and accuracy" of the disclosure. The handwritten statement signed by the previous owner clearly is not a statement which would satisfy the requirements of chapter Trans 154, Wis. Adm. Code; however, the issue is whether it would be considered sufficient to satisfy the requirements of sec. Trans 139.03(2)(a) Wis. Adm. Code.

There is no evidence that the statement signed by the previous owner of the vehicle is fraudulent. Additionally, Jim's Auto Sales presumably had the Minnesota title for the vehicle in its possession at the time of the sale to the Olsons. According to the Minnesota title the odometer of the vehicle read 85,671 miles on March 10, 1997. This was approximately one year before Susan Olson purchased the vehicle from Jim's Auto Sales. Based upon the Minnesota title and the handwritten statement signed by Michel Bergren, Jim's Auto Sales had sufficient reliable evidence to disclose the mileage of the vehicle as 100,220 miles. There is no evidence in the record of a violation of any of the listed provisions of sec. 218.01(3)(a), Stats., by Jim's Auto Sales which caused the loss sustained by the Olsons.

CONCLUSIONS OF LAW

1. Susan Olson's claim arose on March 16, 1998, the date she purchased the subject vehicle from Jim's Auto Sales. The surety bond issued to Jim's Auto Sales by Old Republic Surety was in effect at this time. The claim arose during the period covered by the surety bond.

2. Ms. Olson filed a claim against the motor vehicle dealer bond of Jim's Auto Sales on September 30, 1998. The bond claim was filed within three years of the last day of the period covered by the surety bond; therefore, pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. The loss sustained by the Olsons was not caused by an act of Jim's Auto Sales which would be grounds for suspension or revocation of its motor vehicle dealer license; therefore, pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, the claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

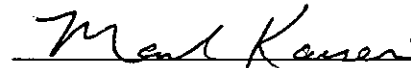
ORDER

The claim filed by Susan Olson against the motor vehicle dealer bond of Jim's Auto Sales is DENIED.

Dated at Madison, Wisconsin on May 11, 1999.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By:



MARK J. KAISER
ADMINISTRATIVE LAW JUDGE